

Agricultural Marketing Service, USDA

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numbered Importer's Exempt Commodity Form filed by the importer or customs broker and shall certify, by completing and signing Section II of the form and mailing the form to the Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, returned to the country of origin, or otherwise disposed of. In such cases, a second "Importer's Exempt Commodity Form" must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV-6 forms and other correspondence regarding entry of 8e commodities must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456, telephone (202) 720-4607. FV-6 forms submitted by fax must be followed by a mailed, original copy of the FV-6. Fax transmissions may be sent to the MOAB at (202) 720-5698.

[61 FR 13060, Mar. 26, 1996]

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Subpart—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601-674.

SOURCE: 35 FR 11372, July 16, 1970, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 981.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties under this part of the Secretary of Agriculture of the United States.

§ 981.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and

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amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 62 Stat. 1247; 63 Stat. 282, 1051; 7 U.S.C. 601 *et seq.*).

§ 981.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 981.4 Almonds.

Almonds means (unless otherwise specified) all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California, and for the purposes of research includes almond shells and hulls.

[41 FR 26852, June 30, 1976]

§ 981.5 Unshelled almonds.

Unshelled almonds means almonds the kernels of which are contained in the shell.

§ 981.6 Shelled almonds.

Shelled almonds mean raw or roasted almonds after the shells are removed and includes blanched, diced, sliced, slivered, cut, halved, or broken almonds, or any combination thereof. Additional almond products may be included by the Secretary from time to time upon consideration of a recommendation from the Board or other pertinent information.

§ 981.7 Edible kernel.

Edible kernel means a kernel, piece, or particle of almond kernel that is not inedible.

[41 FR 26852, June 30, 1976]

§ 981.8 Inedible kernel.

Inedible kernel means a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt not easily removed by washing. This definition may be modified by the Board with the approval of the Secretary: *Provided*,

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That the Board shall submit any recommendation for modification to the Secretary not later than August 1.

[41 FR 26852, June 30, 1976]

§ 981.9 Kernel weight.

Kernel weight means the weight of kernels, including pieces and particles, regardless of whether edible or inedible, contained in any lot of almonds, unshelled or shelled.

§ 981.10 Almonds received for his own account.

Almonds received for his own account means all almonds which are received by a handler (including all almonds of his own production), except those which are received by him for storage or processing for the account of any other person and with respect to which such handler performs no handling function.

§ 981.11 Area of production.

Area of production means the State of California.

§ 981.12 Grower.

Grower is synonymous with *producer* and means any person engaging, in a proprietary capacity, in the commercial production of almonds.

§ 981.13 Handler.

Handler means any person handling almonds during any crop year, except that such term shall not include either a grower who sells only almonds of his own production at retail at a roadside stand operated by him, or a person receiving almonds from growers and other persons and delivering these almonds to a handler.

[41 FR 26852, June 30, 1976]

§ 981.14 Cooperative handler.

Cooperative handler means any handler as defined in § 981.13 of this subpart which qualifies for treatment as a non-profit cooperative association as defined in Section 54001, *et seq.* of the California Food and Agricultural Code. The Board, with the approval of the Secretary, may modify this definition, if necessary.

[61 FR 32920, June 26, 1996]

§ 981.15 Almond product.

Almond product means any edible preparation other than those included under the definition of "shelled almonds," manufactured entirely or partially from raw shelled almonds, and nut mixtures containing shelled or unshelled almonds.

§ 981.16 To handle.

To handle means to use almonds commercially of own production or to sell, consign, transport, ship (except as a common carrier of almonds owned by another) or in any other way to put almonds grown in the area of production into any channel of trade for human consumption worldwide, either within the area of production or by transfer from the area of production to points outside or by receipt as first receiver at any point of entry in the United States or Puerto Rico of almonds grown in the area of production, exported therefrom and submitted for re-entry or which are reentered free of duty. However, sales or deliveries by a grower to handlers, hullers or other processors within the area of production shall not, in itself, be considered as handling by a grower.

[61 FR 32920, June 26, 1996]

§ 981.17 Inspection agency.

Inspection agency means the Federal-State Inspection Service or, when specifically designated, the Federal Inspection Service.

§ 981.18 Settlement weight.

Settlement weight means the actual gross weight of any lot of almonds received for his own account by any handler, less adjustments as follows:

- (a) For weight of containers,
- (b) For excess moisture,
- (c) For trash or other foreign material of any kind, and
- (d) For inedible kernels as defined in § 981.8.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32920, June 26, 1996]

§ 981.19 Crop year.

Crop year means the twelve month period from August 1 to the following July 31, inclusive. Any new crop almonds harvested or received prior to

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August 1 will be applied to the next crop year for marketing order purposes. The first crop year after the implementation of this amendment shall be a 13-month period.

[61 FR 32920, June 26, 1996]

§ 981.20 Handler carryover.

Handler carryover as of any given date means all almonds, wherever located, then held by handlers for their own accounts (whether or not sold) but not including any almond products.

[41 FR 26852, June 30, 1976]

§ 981.21 Trade demand.

Trade demand means the quantity of almonds (kernelweight basis) which commercial distributors and users such as the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution worldwide.

[61 FR 32920, June 26, 1996]

§ 981.21a Salable almonds.

Salable almonds means those almonds which are free to be handled pursuant to any salable percentage established by the Secretary pursuant to § 981.47 or § 981.48 and, in the absence of a reserve percentage being established for a crop year, all almonds received by handlers for their own accounts during that crop year.

§ 981.21b Reserve almonds.

Reserve almonds means those almonds which must be withheld from handling in satisfaction of a reserve obligation arising from application of a reserve percentage established by the Secretary pursuant to § 981.47 or § 981.48.

§ 981.22 Board.

Board means the Almond Board of California which is the administrative agency established by this subpart.

[41 FR 26852, June 30, 1976]

§ 981.23 Part and subpart.

Part means the order regulating the handling of almonds grown in the State of California, and all rules, regulations, and supplementary orders issued there-

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under, and the aforesaid order shall be a *subpart* of such part.

ALMOND BOARD OF CALIFORNIA

§ 981.30 Establishment.

A Board of ten members, with an alternate member for each such member, is hereby established.

§ 981.31 Membership representation.

Membership of the Board will be determined in the following manner:

(a) Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (a) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Those growers who market their almonds through cooperative handlers; and

(2) Those growers who market their almonds through other than cooperative handlers.

(b) Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (b) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Cooperative handlers; and

(2) All handlers, other than cooperative handlers.

(c) One member and an alternate shall be selected from nominees submitted by each of the following groups designated in paragraphs (c) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) The group of cooperative handlers or the group of handlers other than cooperative handlers, whichever received for their account more than 50 percent of the almonds delivered by all growers as determined by December 31 of the then current crop year; and

(2) Those growers whose almonds were marketed through the handler group identified in paragraph (c)(1) of this section.

[61 FR 32920, June 26, 1996]

§ 981.32 Nominations.

(a) *Method.* (1) Each year the terms of office of three of the members elected

pursuant to Section 981.31 (a) and (b) shall expire, except every third year when the term of office for two of those members shall expire. Nominees for each respective member and alternate member shall be chosen by ballot delivered to the Board. Nominees chosen by the Board in this manner shall be submitted by the Board to the Secretary on or before February 20 of each year together with such information as the Secretary may require. If a nomination for any Board member or alternate is not received by the Secretary on or before February 20, the Secretary may select such member or alternate from persons belonging to the group to be represented without nomination. The Board shall mail to all handlers and growers, other than the cooperative(s) of record, the required ballots with all necessary voting information including the names of incumbents willing to accept renomination, and, to such growers, the name of any person proposed for nomination in a petition signed by at least 15 such growers and filed with the Board on or before January 20. Distribution of ballots shall be announced by press release, furnishing pertinent information on balloting, issued by the Board through newspapers and other publications having general circulation in the almond producing areas.

(2) Nominees for the positions described in Section 981.31(c) shall be handled in the same manner as described in paragraph (a)(1) of this section except that those terms of office shall expire annually.

(b) *Voting.* (1) Nominees for each member and alternate member position shall be voted upon separately by the group proposing them. The handler or grower group which is determined to be eligible for additional representation pursuant to §981.31 (e) and (f), respectively, shall nominate such representatives in the same manner prescribed for choosing other nominees.

(2) Each handler may vote for a nominee for each position representing the group to which he belongs. Each handler vote shall be weighted by the quantity of almonds (kernel weight basis computed to the nearest whole ton) handled for his own account through December 31 of the crop year in which nominations are made. The

nominee for each position shall be the person receiving the highest weighted vote for the position.

(3) Growers who market their almonds through cooperative handlers shall vote through their respective organizations. Each cooperative shall cast a vote for nominees for each position representing the cooperative grower group and such ballots shall be weighted by the number of growers who are members of, or under contract with, such cooperative. The nominee for each position shall be the person receiving the highest weighted vote for that position.

(4) Growers who market their almonds through other than cooperative handlers shall each have one equal vote. The nominees for each position representing such grower group shall be the person receiving the highest number of votes for that position.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32920, June 26, 1996]

§ 981.33 Selection and term of office.

(a) Members and their respective alternates for positions open on the Board shall be selected by the Secretary from persons nominated pursuant to §981.32, or, at the discretion of the Secretary, from other qualified persons, for a term of office beginning March 1. Members and alternates shall continue to serve until their respective successors are selected and qualified.

(b) The term of office of members of the Board shall be for a period of three years beginning on March 1 of the years selected except where otherwise provided. However, for the initial eight members of the Board selected pursuant to this section and to paragraphs (a) and (b) of §981.31, two members shall serve for a term of one year; three members shall serve for a term of two years; and three members shall serve for a term of three years. For the initial terms of office, at the time of nomination under §981.32, the Board shall make this designation by lot. The term of office for the two members selected under paragraph (c) of §981.31 shall always be for a period of one year.

(c) Board members may serve for a total of six consecutive years. Members who have served for six consecutive years must leave the Board for at least

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one year before becoming eligible to serve again. A person who has served less than six consecutive years on the Board may not be nominated to a new three year term if his or her total consecutive years on the Board at the end of that new term would exceed six years. This limitation on tenure shall not include service on the Board prior to implementation of this amendment and shall not apply to alternate members.

[61 FR 32920, June 26, 1996]

§ 981.34 Qualification and acceptance.

(a) Any person to be selected as a member or alternate of the Board shall, prior to such selection, qualify by providing such background information as necessary and by advising the Secretary that he/she agrees to serve in the position for which nominated. Grower members and alternates shall be growers or employees of growers, and handler members and alternates shall be handlers or employees of handlers. In the event any member or alternate ceases to be qualified for the position for which selected, that position shall be deemed vacant.

(b) The Board, with approval of the Secretary, may establish additional eligibility requirements for grower members on the Board.

[61 FR 32921, June 26, 1996]

§ 981.35 Alternates.

An alternate for a member for the Board shall act in the place and stead of such member (a) in his absence, or (b) in the event of his death, removal, resignation or disqualification, until a successor for his unexpired term has been selected and has qualified.

§ 981.36 Vacancy.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate of the Board, a successor for his unexpired term shall be selected by the Secretary after consideration of recommendations which may be submitted by members of the group for which such vacancy exists, unless such selection is deemed unnecessary by the Secretary.

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§ 981.37 Expenses.

The members of the Board shall serve without compensation, but shall be allowed their necessary expenses.

§ 981.38 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 981.39 Duties.

The Board shall have, among other things, the following duties:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall be subject to examination by the Secretary at any time;

(c) To investigate the growing, shipping, and marketing conditions with respect to almonds and to assemble data in connection therewith;

(d) To furnish to the Secretary such available information as may be deemed pertinent or as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries, define the duties and fix the bonds of such employees; and

(f) To cause the books of the Board to be audited by one or more competent certified public accountants at least once for each crop year, and at such other times as the Board may deem necessary or as the Secretary may request; and the report of each such audit shall show, among other things, the receipt and expenditure of funds pursuant hereto; and to file with the Secretary three copies of all audit reports made.

§ 981.40 Procedure.

(a) *Organization and rules.* The members of the Board shall select a chairman from their membership. The Board

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shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The Board shall give to the Secretary or his designated agent and representatives the same notice of meetings of the Board as is given to members of the Board.

(b) *Quorum.* All decisions of the Board, except where otherwise specifically provided, shall be by a majority vote of the members present. The presence of six members shall be required to constitute a quorum.

(c) *Voting by mail, telegram, fax or other electronic means.* The Board may vote by mail, telegram, fax or other electronic means upon written notice to all members, or alternates acting in their place, including in the notice a statement of a reasonable time, not to exceed 10 days, in which a vote by mail, telegram, fax or other electronic means must be received by the Board for counting. Voting by mail, telegram, fax or other electronic means shall not be permitted at any assembled meeting of the Board. When a proposition is submitted for vote by mail, telegram, fax or other electronic means, at least eight members of the Board must vote in favor of its passage or the proposition shall be defeated.

(d) *Right of the Secretary.* The members of the Board (including successors or alternates), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

(e) *Additional voting requirements.* Adoption of recommendations by the Board with respect to projects pursuant to § 981.41 involving production research, marketing research and development projects, and marketing promotion including paid advertising and crediting the pro rata expense assessment obligation of handlers with such portion of their direct expenditures for marketing promotion including paid

advertising, shall require at least seven affirmative votes.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 15, 1972; 61 FR 32921, June 26, 1996]

RESEARCH

§ 981.41 Research and development.

(a) *General.* The Board, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of almonds. The Board may also provide for crediting the pro rata expense assessment obligations of a handler with such portion of his direct expenditure for such marketing promotion including paid advertising as may be authorized. The expenses of such projects shall be paid from funds collected pursuant to § 981.81(a) or credited pursuant to paragraph (c) of this section.

(b) *Authorization.* If, on the basis of a Control Board recommendation pursuant to § 981.40(e) with respect to projects pursuant to this section, and appertaining rules and regulations established by the Secretary on recommendation of the Board, and other available information, the Secretary concurs that such activities should be permitted, he shall authorize such activities.

(c) *Creditable expenditures.* The Board, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion including paid advertising, that promotes the sale of almonds, almond products or their uses. No handler shall receive credit for any allowable direct expenditures that would exceed the total of his assessment obligation which is attributable to that portion of his assessment designated for marketing promotion including paid advertising. Such expenditures may include, but are not limited to, money spent for advertising space or time in newspaper, magazines, radio, television, transit, and outdoor media, including the actual

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standard agency commission costs not to exceed 15 percent.

(d) *Promotion guidelines.* All marketing promotion activity engaged in by the Board, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising shall refer to any private brand, private trademark or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value, or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product;

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity; and

(4) Upon conclusion of each activity, but at least annually, the Board shall summarize and report the results of such activity to its members and to the Secretary.

(e) *Rules and regulations.* Before any project involving marketing promotion, including paid advertising and the crediting of the pro rata expense assessment obligation of handlers is undertaken pursuant to this section, the Secretary, after recommendation by the Board, shall prescribe appropriate rules and regulations as are necessary to effectively regulate such activity.

[37 FR 3984, Feb. 25, 1972, as amended at 61 FR 32921, June 26, 1996]

QUALITY CONTROL

§ 981.42 Quality control.

(a) *Incoming.* Except as provided in this paragraph, each handler shall cause to be determined, through the inspection agency, and at handler expense, the percent of inedible kernels in each variety received by him and shall report the determination to the Board. The quantity of inedible kernels in each variety in excess of two percent of the kernel weight received, shall constitute a weight obligation to be accumulated in the course of processing and shall be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. The Board, with the approval of the Secretary, may change

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this percentage for any crop year, may authorize additional outlets, may exempt bleaching stock from inedible kernel determination or obligation and may establish rules and regulations necessary and incidental to the administration of this provision, including the method of determining inedible kernel content and satisfaction of the disposition obligation. The Board for good cause may waive portions of obligations for those handlers not generating inedible material from such sources as blanching or manufacturing.

(b) *Outgoing.* For any crop year the Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to almonds to be handled or to be processed into manufactured products, as will contribute to orderly marketing or be in the public interest. In such crop year, no handler shall handle or process almonds into manufactured items or products unless they meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

[41 FR 26853, June 30, 1976, as amended at 41 FR 53651, Dec. 8, 1976]

VOLUME REGULATION

§ 981.45 General.

In order to effectuate the declared policy of the act, no handler shall handle almonds except in accordance with the terms and conditions of this part.

§ 981.46 Withholding reserve.

When a reserve percentage has been fixed for any crop year, as hereinafter provided, no handler shall handle almonds except on condition that he comply with the requirements in respect to withholding reserve almonds and the prescribed disposition thereof.

§ 981.47 Method of establishing salable and reserve percentages.

Whenever the Secretary finds, from the recommendations and supporting information supplied by the Board or from any other available information, that to designate the percentages of almonds during any crop year which

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shall be salable almonds and reserve almonds would tend to effectuate the declared policy of the act, he shall designate such percentages. Except as provided in § 981.50 the salable and reserve percentages shall each be applied to the kernel weight of almonds received by a handler for his own account during the crop year. In establishing such salable and reserve percentages, the Secretary shall give consideration to the ratio of estimated trade demand (domestic plus export, less the handler carryover available to satisfy trade demand plus the desirable handler carryover at the end of the crop year) to the estimated production of marketable almonds (all expressed in terms of kernel weight) or the allocation quantity (marketable production plus almonds diverted to oil or feed when eligible for reserve satisfaction) whichever is applicable; the recommendation submitted to him by the Board; and such other information as he deems appropriate. The total of the salable and reserve percentages established each crop year shall equal 100 percent.

[41 FR 26853, June 30, 1976, as amended at 61 FR 32921, June 26, 1996]

§ 981.48 Increase of salable percentage.

Upon request filed prior to May 15 by the Board or, if the Board should fail to request, by two or more handlers who have handled at least 15 percent of all almonds handled in the preceding crop year, and after findings of fact (based upon a revision of the estimates required under § 981.49 and other pertinent information) that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year, the Secretary may increase the salable percentage. Such findings shall be made in the manner specified in § 981.47.

§ 981.49 Board estimates and recommendations.

To aid the Secretary in fixing the salable and reserve percentages, the Board shall furnish to the Secretary, not later than August 1, the following estimates (kernel weight basis) and recommendations for the crop year, each of which, or any later revisions

thereof, shall be adopted by the affirmative vote of at least six members:

- (a) The quantity of marketable almonds to be produced;
- (b) The estimated handler carryover and the estimated reserve inventory as of July 31;
- (c) The desirable handler carryover and the probable reserve inventory at the end of the crop year;
- (d) The trade demand, taking into consideration anticipated imports, economic conditions and the anticipated market price (within the limitations of the act); and
- (e) The recommended salable and reserve percentages to be established.

The Board shall also furnish to the Secretary a complete report of the proceedings of the Board meeting at which the recommended salable and reserve percentages were considered. If, for any reason, the Board fails to make these estimates or to recommend to the Secretary salable and reserve percentages as required hereby, reports representing the views of members with respect to such matters may be submitted to the Secretary who may act on the basis of such reports or other information available to him.

[35 FR 11372, July 16, 1970, as amended at 41 FR 26853, June 30, 1976; 61 FR 32921, June 26, 1996]

§ 981.50 Reserve obligation.

Whenever salable and reserve percentages are in effect for a crop year, each handler shall withhold from handling a quantity of almonds having a kernel weight equal to the reserve percentage of the kernel weight of all almonds such handler receives for his own account during the crop year: *Provided*, That, any quantity of almonds delivered to outlets such as poultry or animal feed or crushing into oil, in a manner permitting accountability to the Board, shall not be included in such receipts. The quantity of almonds hereby required to be withheld from handling shall constitute, and may be referred to as the "reserve" or "reserve obligation" of a handler. The almonds handled as salable almonds by any handler, in accordance with the provisions of this part, shall be deemed to be that handler's quota fixed by the Secretary

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within the meaning of section 8a(5) of the act.

[41 FR 26853, June 30, 1976]

§ 981.51 Requirements for reserve.

Each handler may satisfy his reserve obligation with such almonds specified in the terms of the agency agreement authorized in § 981.67, including all applicable inspection and certification requirements. Any handler who does not become an agent may receive credit by similarly delivering almonds to the Board or its designees. These requirements may be established by the Board, with the approval of the Secretary, and from time to time so modified, and may include grade requirements for reserve almonds delivered to human consumption outlets.

[41 FR 26853, June 30, 1976]

§ 981.52 Holding requirement and delivery.

Each handler shall, at all times, hold in his possession or under his control, in proper storage for the account of the Board, the quantity of almonds necessary to meet his reserve obligation less: (a) Any quantity which was disposed of by him pursuant to § 981.67; and (b) any quantity for which he is otherwise relieved by the Board of responsibility to so hold almonds. Upon demand of the Board reserve almonds shall be delivered to the Board f.o.b. handler's warehouse or point of storage, except that the Board shall not make such demand upon a handler with respect to reserve almonds for which he has agreed to undertake disposition pursuant to § 981.67. Any handler who does not act as agent for the Board in the disposition of reserve almonds shall be subject to the applicable inspection and certification requirements prescribed by the Board pursuant to § 981.67.

[41 FR 26853, June 30, 1976]

§ 981.54 Payment to handlers for services rendered.

The Board may pay handlers for necessary services rendered by them in connection with almonds eventually disposed of directly by the Board as reserve including but not limited to storing, shelling, sorting, bleaching, grad-

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ing, packaging, fumigating, and other services in accordance with such schedule of payments and under such conditions as may be established by the Secretary after recommendation of the Board.

§ 981.55 Interhandler transfers.

(a) Any handler may, upon notice to and under the supervision and direction of the Board, transfer almonds or reserve credits to another handler. Any such transfers shall be accounted for in such manner that the reserve obligation and assessments on the combined transactions of the participating handlers shall be fully met and such reserve withholding obligation and assessments may be divided between such handlers in accordance with their arrangements subject to approval of the Board.

(b) When salable and reserve percentages are in effect, any handler may transfer reserve withholding obligation to other handlers. Terms and conditions implementing this provision must be recommended by the Board and approved by the Secretary.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32921, June 26, 1996]

§ 981.56 Assistance of Board in accounting for reserve.

The Board, on written request, may assist handlers in accounting for their reserve obligations and may aid any handler in acquiring almonds to meet any deficiency in his reserve.

§ 981.57 Application of salable and reserve percentages after end of crop year.

The salable and reserve percentages established for any crop year shall continue in effect with respect to all almonds for which the reserve obligation has not been previously met, which are received for his own account or handled by any handler after the end of such crop year and before salable and reserve percentages are established for the succeeding crop year. After such percentages are established for the new crop year, the withholding requirements for all such almonds theretofore received for his own account or handled during that crop year shall be adjusted to the newly established percentages.

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§ 981.59 Adjustment upon increase of salable percentage.

(a) Upon any increase in the salable percentage and corresponding decrease in the reserve percentage, the reserve obligation of each handler for the entire crop year to the effective date of such action shall be computed in accordance with such revised salable and reserve percentages. From the reserve almonds that may have been withheld by him and not yet disposed of, any handler authorized to act and acting as agent of the Board in disposing of reserve pursuant to § 981.66 shall be permitted to select, under the supervision and direction of the Control Board, the particular reserve almonds to be restored to his salable percentage, and such restoration shall be deemed to fulfill the obligation of the Board with respect to such increase.

(b) In the case of handlers who have not been authorized to dispose of their own reserves, and handlers who have terminated their agencies to dispose of their own reserves, prior to an increase in the salable percentage, insofar as practicable each such handler shall be permitted to select almonds from his own reserve to be restored to his salable quantity. In the event there are not sufficient reserve almonds held by the Board at the time the salable percentage is increased, to make full restoration, as represented by the increase in the salable percentage, to all such handlers, the restoration to the salable quantities of the respective handlers shall be pro rata on the basis of certified kernel weight poundage of reserve contributed by said handlers during the crop year to the date of increase of the salable percentage: *Provided*, That restoration shall be made in a manner that will result, to the extent practicable, in a comparable percentage of reserve disposition for each such handler and that no handler shall receive almonds in excess of his contribution. Such restoration to the salable quantity shall be deemed to fulfill the obligation of the Board with respect to the increase in the salable percentage.

§ 981.60 Determination of kernel weight.

(a) *Almonds for which settlement is made on kernel weight.* All lots of almonds, whether shelled or unshelled, for which settlement is made on the basis of kernel weight shall be included in the total kernel weight for any handler at the settlement weight.

(b) *Almonds for which settlement is made on unshelled weight.* The settlement weight for unshelled almonds shall be determined on the basis of representative samples of unshelled almonds reduced to shelled weight.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32921, June 26, 1996]

§ 981.61 Redetermination of kernel weight.

The Board, on the basis of reports by handlers, shall redetermine the kernel weight of almonds received by each handler for his own account during each crop year through each of the following dates: December 31, March 31, and June 30. Such redetermined kernel weight for each handler shall be the basis for computing his reserve obligation for the crop year through such dates, except that adjustment shall be made for almonds on which the obligation has been assumed by another handler. The redetermined kernel weight of each handler's receipts, as of any date during the crop year, shall be his carryover as of that date plus the weight of almonds delivered or used in products minus the carryover at the beginning of the crop year, the weight on which another handler has assumed the obligations, and the weight delivered to exempt outlets. Weights used in such computations for various classifications of almonds shall be:

(a) For unshelled almonds, the kernelweight based on representative samples reduced to shelled weight;

(b) For shelled almonds, the net weight; and

(c) For shelled almonds used in production of almond products, the net weight of such almonds.

[41 FR 26853, June 30, 1976, as amended at 61 FR 32921, June 26, 1996]

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DISPOSITION OF RESERVE

§ 981.65 Prohibition on the use or disposition of reserve almonds.

Except as provided in §§ 981.66 and 981.67, almonds that are withheld as reserve pursuant to the requirements of § 981.50 or are creditable in satisfaction of a reserve withholding obligation thereunder, shall not be used or disposed of by any handler or any other person.

§ 981.66 Conditions governing disposition of reserve.

(a) *General.* The Board shall have power and authority to sell or dispose of any and all reserve almonds withheld upon the best terms and at the highest return obtainable consistent with the ultimate complete disposition of reserve, subject to all conditions of this section.

(b) *Exclusion from salable normal trade channels.* No reserve almonds shall be sold in the United States, Puerto Rico, and the Canal Zone other than to governmental agencies or to charitable institutions for charitable purposes, except for diversion into almond oil, almond butter, poultry or animal feed, or into other channels which the Board finds are noncompetitive with existing normal markets for almonds, and with proper safeguards in each case to prevent such almonds thereafter entering the channels of trade in such normal markets.

(c) *Disposition after December 31.* Any reserve almonds remaining unsold as of December 31 shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of December 31 herein specified may be extended to a later date by the Secretary, upon recommendation of the Board or other information.

(d) *Expenses.* Direct expenses incurred by the Board in the maintenance and disposition of reserve almonds shall be charged against the proceeds of sales of such almonds.

(e) *Distribution of proceeds.* Net proceeds from the disposition of reserve almonds by the Board shall be distributed to each handler in proportion to his relative share of such disposition in terms of creditable reserve kernel

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weight pursuant to § 981.51 or such other basis as the Board may adopt with the approval of the Secretary.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972; 41 FR 26854, June 30, 1976; 61 FR 32921, June 26, 1996]

§ 981.67 Disposition by handler.

Upon request of a handler, made prior to the delivery by him of any reserve to the Board in any crop year, the Board shall authorize such handler to act as agent of the Board, upon such reasonable terms and conditions, including inspection and certification requirements, as the Board may specify and subject to the conditions of § 981.66 in disposing of the reserve withheld from handling by such handler for that crop year. Any handler who is authorized to dispose of his reserve may, through arrangement with another handler dispose of such reserve through such other handler or, in lieu of disposition, may acquire credits for reserve disposition from another handler. In the first instance, the second handler shall also be subject to the conditions of § 981.66. It shall be the obligation of any handler authorized to dispose of such reserve to effect disposition thereof in accordance with all applicable requirements and conditions. The proceeds of such disposition shall be retained by the handler making the disposition, except that, in case he disposes of the reserve of another handler, the proceeds from that disposition shall be divided between the two handlers on the basis of a mutual agreement. Such authorization shall expire as of December 31 of the next crop year, and any reserve then remaining undisposed of by the handler shall be returned to the Board. If the date of December 31 specified in § 981.66(e) is extended, the date of December 31 shall be extended correspondingly. Any handler who has been authorized to act as agent of the Board in disposing of his reserve may terminate such agency as of April 1 of the particular crop year by giving written notice to the Board to that effect not later than the previous March 20, in which event such handler shall return to the Board, for disposition by it, all reserve almonds remaining in his possession. In case a handler does not terminate his agency as of

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April 1, he shall be required to continue to serve as such agent until December 31 of the next crop year. The Board shall not terminate such an agency prior to December 31 unless the agent violates the terms and conditions specified by the Board or other provisions of the order. During the period of such agency the Board, as principal, shall not dispose of the reserve withheld from handling by said agent. The Board, with the approval of the Secretary may prescribe such rules and regulations as are necessary to regulate disposition of reserve almonds including methods for crediting as reserve any salable almonds sold and delivered to reserve outlets.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32921, June 26, 1996]

RECORDS AND REPORTS

§ 981.70 Records and verification.

Each handler shall keep records which will clearly show the details of his or her receipts of almonds, withholdings, sales, shipments, inventories, reserve disposition, advertising and promotion activities, as well as other pertinent information regarding his or her operation pursuant to the provisions of this part: *Provided*, that, such records shall be kept in the State of California. Such records shall be retained by the handler for 2 years after the end of the crop year to which they apply. Each handler's premises shall be accessible to authorized representatives of the Board and the Secretary for examination and audit of the aforesaid records and for inspection and observation of almonds. The Board shall make such checks of almonds or audits of each handler's records as it deems appropriate or are requested by the Secretary to insure that accurate information as required in this part is being furnished by handlers.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972; 61 FR 32921, June 26, 1996]

§ 981.71 Record of receipts.

For the purpose of establishing the reserve obligation and furnishing statistical information to the Board necessary for the conduct of its operations, each handler, on receiving al-

monds for his own account, shall issue to the person from whom so received a receipt therefor. At least two duplicates thereof shall be made at the time of issuance, one of which shall be retained by the handler as a part of his records and the other submitted to the Board as hereinafter provided. Such receipts shall be serially numbered and shall accurately show for each lot received, the identity of the handler, the name and address of the person from whom received, the number of containers in the lot, the variety, whether shelled or unshelled, and the settlement weight for each such variety. The character and amount of all adjustments deducted from the gross weight shall be shown with the gross weight on the receipt issued by the handler.

EFFECTIVE DATE NOTE: At 40 FR 4416, Jan. 30, 1975, § 981.71 was suspended indefinitely.

§ 981.72 Reports of receipts.

Each handler receiving almonds for his own account shall tabulate such receipts by varieties and shall submit reports thereof to the Board in such form and at such intervals as the Board may prescribe for all receipts issued by him. Such reports shall be accompanied by duplicate copies of the receipts issued pursuant to the provisions of § 981.71 for all almonds included in such report. The Board, after checking such reports in such manner as it deems desirable, shall determine in the manner specified in § 981.60 the kernel weight of the almonds so received.

EFFECTIVE DATE NOTE: At 40 FR 4416, Jan. 30, 1975, in § 981.72, the second sentence was suspended indefinitely.

§ 981.73 Periodic reports.

On or before January 15, and April 15, and August 15 of each crop year, each handler shall file with the Board a written report, certified to the Board and to the Secretary by such handler as to its completeness and correctness, showing as of the close of business on December 31, March 31, and July 31, respectively, such information as may be prescribed by the Board for use in re-determination of kernel weight and marketing policy considerations.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32922, June 26, 1996]

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§ 981.74 Other reports.

Upon the request of the Board, made with the approval of the Secretary, every handler shall furnish to the Board in such manner and at such times as it prescribes (in addition to such other reports as are specifically provided for in this part) such other information as will enable the Board to perform its duties and exercise its powers hereunder.

§ 981.75 Confidential nature of records and reports.

All information contained in handler records made available to the Board or the Secretary, or in reports to the Board, constituting a trade secret or disclosing the trade position, financial condition, or business operations of any handler shall be considered as confidential information. Such information received by the Board, shall be kept in the custody and under the control of one or more employees of the Board, who shall disclose such information to no person except the Secretary.

§ 981.76 Handler list of growers.

No later than December 31 of each crop year, each handler other than a cooperative handler (hereinafter, referred to as independent handler) governed by this subpart shall, upon request, submit to the Board a complete list of growers who have delivered almonds to such independent handler during that crop year.

[61 FR 32921, June 26, 1996]

EXPENSES AND ASSESSMENTS

§ 981.80 Expenses.

The Board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the Board, including the accumulation and maintenance of an operating reserve fund, and for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendation of the Board as to the expenses for each such year, together with all data supporting such recommendation, shall be submitted to the Secretary on or before August 1 of

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the crop year in connection with which such recommendation is made.

[35 FR 11372, July 16, 1970, as amended at 37 FR, 3984, Feb. 25, 1972]

§ 981.81 Assessment.

(a) *Requirement for payment.* Each handler shall pay to the Board on demand by the Board, from time to time, such sum less any amounts credited pursuant to § 981.41, based on such rate per pound of almonds, kernel weight basis, received by him for his own account (except as to receipts from other handlers on which assessments have been paid) as the Secretary finds is necessary to provide funds to meet the authorized board expenses and the operating reserve requirements, and establishes for the crop year. Upon redetermination of the kernel weight of almonds received by handlers for their own account as provided in § 981.61, such redetermined kernel weight for each handler, adjusted for receipts on which assessments have been paid, shall be the basis upon which he shall pay assessments. At any time during or after a crop year, the Secretary may increase the rate of assessments to apply to all such almonds during such crop year to secure sufficient funds to cover the expenses authorized by § 981.80 or by any later finding by the Secretary relative to the expenses of the Board, and such additional assessments shall be paid to the Board by each handler on demand. The payment of assessments for the maintenance and functioning of the Board may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Refunds.* Any money collected as assessments for either the administrative (maintenance and functioning) or research activities of the Board and not used for the expenses of the applicable crop year, may be used in paying the Board's expenses of the first four months of the succeeding crop year. No later than the fifth month the amount not expended from assessments collected for administrative-research in the previous crop year shall be retained in the operating reserve fund. Any amounts, not credited pursuant to § 981.41 for a crop year may be used by

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the Board for its marketing promotion expenses of the succeeding crop year, and any unexpended portion of those amounts at the end of that crop year shall be retained in the marketing promotion portion of the operating reserve fund. Any funds in each portion of the operating reserve fund in excess of the level authorized pursuant to paragraph (c) of this section shall be refunded to handlers or used to reduce the assessment rate of the subsequent crop year, as the Board may determine. Each handler's share of a refund shall be the amount by which his payment of assessments exceeds his pro rata share of the two major classifications of Board expenses. For the purpose of computing any refund from the marketing promotion portion, each handler's payment of assessments shall include any amount credited to the handler pursuant to § 981.41. In lieu of a refund, each handler may have the amount due him credited to his assessment obligation of the crop year in which the amount would be refunded.

(c) *Reserves.* The Board may maintain an operating reserve fund consisting of an administrative-research portion and a marketing promotion portion. The amount in each portion shall not exceed approximately six-months' budget for the activity area or such lower amount as the Board may establish with the approval of the Secretary: *Provided*, That this limitation shall not restrict the temporary retention of excess funds for the purpose of stabilizing or reducing the assessment rate of a crop year. To the extent that funds from current crop year assessments are inadequate, funds in the operating reserve may be used for the authorized activities of the crop year. Funds so used, and not exceeding the six-month limitation, shall be replaced to the extent practicable from assessments subsequently collected for the crop year.

(d) *Disposition of funds upon termination.* Any money collected from assessments hereunder and remaining unexpended in possession of the Board upon the termination of this part shall be distributed in such manner as the Secretary may direct.

(e) Any assessment not paid by a handler within a period of time prescribed by the Board may be subject to

an interest or late payment charge or both. The period of time, rate of interest and late payment charge shall be as recommended by the Board and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972; 41 FR 26854, June 30, 1976; 61 FR 32921, June 26, 1996]

MISCELLANEOUS PROVISIONS

§ 981.85 Personal liability.

No member or alternate member of the Board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent, or employee, except for acts of dishonesty.

§ 981.86 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 981.87 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 981.88 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon its termination except with respect to acts done under and during its existence.

§ 981.89 Agents.

The Secretary may, by a designation in writing, name any person, including

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any officer or employee of the United States Government, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§981.90 Effective time, suspension, or termination.

(a) *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways hereinafter specified in this section.

(b) *Suspension or termination—(1) Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(2) The Secretary shall conduct a referendum as soon as practical after the end of the fiscal year ending two years after implementation of this amendment, and at such time every fifth year thereafter, to ascertain whether continuation of the order is favored by growers who have been engaged in the production of almonds for market within the State of California during the current crop year.

(3) *When favored by growers.* The Secretary shall terminate the provisions of this subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the growers of almonds who during the crop year have been engaged in the production for market of almonds in the State of California: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such almonds produced for market within said State; but such termination shall be effected only if announced on or before July 1 of the then current crop year.

(4) *If enabling legislation is terminated.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination—(1) Designation of trustees.* Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) *Duties of trustees.* Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant thereto.

(3) *Obligations of persons other than board members and trustees.* Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said Board and upon the said joint trustees.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32921, June 26, 1996]

§981.91 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

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§ 981.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by any person or by the Board.

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .300 through .399) and "Marketing percentage" regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart—Assessment Rates

§ 981.343 Assessment rate.

On and after August 1, 1998, an assessment rate of \$0.025 cents per pound is established for California almonds. Of the \$0.025 cent assessment rate, \$0.0125 cent per assessable pound is available for handler credit-back.

[63 FR 48997, Sept. 14, 1998]

Subpart—Administrative Rules and Regulations

§ 981.401 Adjusted kernel weight.

(a) *Definition.* Adjusted kernel weight shall mean the actual gross weight of any lot of almonds: Less weight of con-

tainers; less moisture of kernels in excess of five percent; less shells, if applicable; less processing loss of one percent for deliveries with less than 95 percent kernels; less trash or other foreign material. The adjusted kernel weight shall be determined by sampling certified by the inspection agency.

(b) *Computation.* The computation of adjusted kernel weight shall be in the manner shown in the following examples. The examples are based on the analysis of a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with less than 95 percent kernels, and a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with 95 percent or more kernels. The first computation example is for the lot with less than 95 percent kernels containing the following: Edible kernels, 530 grams; inedible kernels, 120 grams; foreign material, 350 grams, and moisture content of kernels, seven percent. Excess moisture is two percent. The second computation example is for the lot with 95 percent or more kernels containing the following: Edible kernels, 840 grams; inedible kernels, 120 grams; foreign material, 40 grams; and moisture content of kernels, seven percent. Excess moisture is two percent. The example computations are as follows:

	Computation No. 1		Computation No. 2	
	Deliveries with less than 95 percent kernels		Deliveries with 95 percent or more kernels	
	Percent of sample	Weight (pounds)	Percent of sample	Weight (pounds)
1. Actual gross weight of delivery		10,000		10,000
2. Percent of edible kernel weight	53.0		84.0	
3. Less weight loss in processing ¹	1.00		0	
4. Less excess moisture of edible kernels (excess moisture×line 2) ...	1.06		1.68	
5. Net percent shell out (line 2 – lines 3 and 4)	50.94		82.32	
6. Net edible kernels (line 5×line 1)		5,094		8,232
7. Percent of inedible kernels (from sample)	12.0		12.0	
8. Less excess moisture of inedible kernels (excess moisture from sample×line 7)24		.24	
9. Net percent inedible kernels (line 7 – line 8)	11.76		11.76	
10. Total inedible kernels (line 9×line 1)		1,176		1,176
11. Adjusted kernel weight (line 6+line 10)		6,270		9,408

¹ Only applies to deliveries with less than 95 percent kernels.

[45 FR 68630, Oct. 16, 1980, as amended at 61 FR 42991, Aug. 20, 1996]

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§ 981.408 Inedible kernel.

Pursuant to § 981.8, the definition of inedible kernel is modified to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing: Provided, That the presence of web or frass shall not be considered serious damage for the purposes of determining inedible kernels, pieces, or particles of almond kernels.

[59 FR 39419, Aug. 3, 1994]

§ 981.413 Roadside stand exemption.

The term *at retail at a roadside stand* as used in § 981.13 shall be defined to mean sales for home use and not for resale which are not in excess of 100 pounds net kernel weight to any one customer per day. Sales of almonds at certified farmers' markets in compliance with section 1392 of the regulations of the California Department of Food and Agriculture shall be construed as "roadside" sales for the purpose of § 981.13 where these conditions are met.

[50 FR 30264, July 25, 1985]

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) In order for a handler to receive credit for his/her own promotional activities from his/her pro rata portion of advertising assessment payments, pursuant to § 981.41(c), the Board must determine that such expenditures meet the applicable requirements of this section. Credit will be granted either in the form of a payment from the Board, or as an offset to that portion of the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year: *Provided*, That promotional activities conducted during the 1998-99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth as-

essment billing in order to receive credit in the form of a payment from the Board, or as an offset to that portion of the assessment. Credit, hereinafter termed "Credit-Back", will be granted in an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities.

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least 2 weeks prior to the first and second assessment billings and 3 weeks prior to the third and fourth assessment billings: *Provided*, That promotional activities conducted during the 1998-99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit. If the handler(s) conduct activities and submit documentation according to applicable provisions in this section, their advertising assessment obligation will be reduced according to the amount of proven activities approved by the Board.

(c) The Board shall grant Credit-Back for qualifying activities only to the handler who performed such activities and who filed a claim for Credit-Back in accordance with this section.

(d) Credit-Back shall be granted only for qualified promotional activities which are conducted and completed during the crop year for which Credit-Back is requested.

(e) The following requirements shall apply to Credit-Back for all promotional activities:

(1) Credit-Back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for Credit-Back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities. To this end, the Board may issue guidelines for qualifying activities from time to time as warranted. For activities in markets

other than the United States and Canada, paragraph (e)(5) of this section shall also apply.

(2) The clear and evident purpose of each activity shall be to promote the sale, consumption or use of California almonds, and nothing therein shall detract from this purpose.

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising in California almond growing counties with more than 1,000 bearing acres: *Provided*, That outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) Credit-Back shall be granted for those qualified activities specified below, except that Credit-Back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

(i) *Paid advertising directed to end-users, trade or industrial users.* Credit-Back shall be granted for money spent on paid advertising space or time including, but not limited to, newspapers, magazines, radio, television, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity: *Provided*, That no Credit-Back shall be given for related fees charged by an advertising or public relations agency;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) 50/50 advertising with retailers;

(J) Couponing (printing, distribution, and handling costs only); and

(K) Development and use of web-site on the Internet for advertising and public relations purposes: *Provided*, That Credit-Back shall be limited to \$5,000 per year for such activities, and no credit shall be given for costs for E-commerce (mail ordering through the Internet), Extranet (restricted web sites within the Internet), or portions of a web-site that target the farming or grower trade.

(iii) For any qualified activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, with such activity including the handler's name or brand, or the words "California Almonds", the amount allowed for Credit-Back claim shall reflect that portion of the activity represented by almonds, or the handler's actual payment, whichever is less.

(iv) Except as otherwise provided in paragraph (e)(4)(v) of this section, when products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less: *Provided*, That, except for mixed nut products, the amount of Credit-Back for qualified promotional activities for products containing almonds shall be granted at 66⅔ percent of proven expenditures, if the product is owned or distributed by the handler and such ownership or distributorship is stated on the package: *Provided Further*, That to receive any level of credit, the product must display the handler's name, the handler's brand, or the words "California Almonds" on the primary, face label.

(v) When products containing almonds are promoted prior to November 2, 1999, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less.

(5) Credit-Back for promotional activities in a foreign market shall be granted at 66⅔ percent of a handler's unreimbursed expenditures for qualified activities in any foreign market, if

the handler is promoting pursuant to a contract with the Foreign Agricultural Service, USDA (FAS) and/or the California Department of Food and Agriculture (CDFA). Such activities must also meet the requirements of paragraphs (e)(1), (2), (3), (4), and (6) of this section. Unless the Board is administering the foreign marketing program, such activities shall not be eligible for Credit-Back unless the handler certifies that he/she was not and will not be reimbursed by either FAS or the CDFA for the amount claimed for Credit-Back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA will not be eligible for Credit-Back.

(6) A handler must file claims with the Board to obtain Credit-Back for promotional expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the activity.

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided*, That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year: *Provided further*, That promotional activities conducted during the 1998-99 crop year must be conducted and documented at least 2 weeks prior to the mailing of the Board's fourth assessment notice in order to receive credit. In all other instances, handlers must remit the advertising assessment to the Board when billed, and a refund will be issued

to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved Credit-Back claims will be mailed to handlers on February 15, April 15, June 15, and 30 days after submission of final claims for the crop year pursuant to paragraph (e)(6)(iv) of this section. To receive payment on these dates, handler claims must be submitted, with all required elements, at least one month prior to the payment date. A handler can receive Credit-Back for his/her allowable direct expenditures only up to the amount of that portion of the handler's assessment designated for marketing promotion, including paid advertising.

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year: *Provided*, That for activities conducted during the 1998-99 crop year, final claims pertaining to such commitments outstanding must be submitted within 105 days after the close of the crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

(f) *Appeals*. If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary

maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

[59 FR 35233, July 11, 1994, as amended at 64 FR 41028, July 29, 1999; 64 FR 58766, Nov. 1, 1999]

§981.442 Quality control.

(a) *Incoming.* Pursuant to §981.42(a), the quantity of inedible kernels in each variety of almonds received by a handler, including almonds of his own production, shall be determined and disposed of in accordance with the provisions of this paragraph.

(1) *Sampling.* Each handler shall cause a representative sample of almonds to be drawn from each lot of any variety received. The sample shall be drawn before inedible kernels are removed from the lot, or the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the producer for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of the handler's own production, sampling shall be conducted or monitored by the inspection agency in a manner acceptable to the Board. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency.

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of a lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be designated as "mixed". If the variety which constitutes at least 90 percent of the almonds in the lot is unknown, the lot shall be designated "unknown".

(3) *Analysis of sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the

proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total adjusted kernel weight received by handler, the inedible kernel weight and any other information as the Board may prescribe. The report shall cover the handler's daily receipt or the handler's total receipts during a period not exceeding one week, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of 1 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

(ii) If a sufficient sample is not available for any lot of almonds, the handler may establish and substantiate, to the satisfaction of the Board, the received weight, the edible and inedible kernel weights, and the adjusted kernel weight by providing sufficient information as the Board may prescribe. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between the Board and the handler.

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided*, That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to

the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The edible and inedible almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler. The handler's disposition obligation will be credited upon satisfactory completion of ABC Form 8. ABC Form 8, Part A, is filled out by the handler, and Part B by the accepted user. Deliveries containing less than 50 percent almond meat content shall not be credited against the disposition obligation. At least 25 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in §981.408: *Provided*, That this 25 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

(6) *Inedible almonds unfit for processing.* All lots received from growers as "inedible almonds unfit for processing," shall be exempt from the requirements of paragraphs (a) (1) and (3) of this section, but shall be disposed of in their entirety (other than as pickouts), as provided in paragraph (a)(5) of this section. Disposition of these lots shall not be credited toward the disposition obligation of paragraph (a)(4) of this section. If a grower sells or ships inedible almonds to a person other than a handler, the grower thereby becomes a handler and subject to all the requirements of this paragraph.

(7) *Accepted Users.* An accepted user's eligibility shall be subject to the following criteria:

(i) Completion of an application with the Board for accepted user status;

(ii) Submission of a business data sheet to the Board; and

(iii) The accurate and prompt submission of ABC Form 8 Part B to the Board for each lot of almonds received, supported by a public weighmaster weight certificate issued at the request of the accepted user at the time of receipt.

(iv) The Board may deny or revoke accepted user status at any time if the applicant or accepted user fails to meet the terms and conditions of §981.442, or if the applicant or accepted user fails to meet the terms and conditions set forth in the accepted user application (ABC Form 34).

The eligibility of accepted users shall be reviewed annually by the Board. Handlers will not receive credit towards their disposition obligations pursuant to paragraph (a)(4) of this section for lots where the difference between the weight of the lot reported by the inspection agency on ABC Form 8 and the weight of the lot reported on the public weighmaster weight certificate exceeds 2.0 percent.

[42 FR 3160, Jan. 17, 1977, as amended at 43 FR 47969, Oct. 18, 1978; 44 FR 30075, May 24, 1979; 44 FR 67077, Nov. 23, 1979; 49 FR 40788, Oct. 18, 1984; 50 FR 47708, Nov. 20, 1985; 51 FR 36383, Oct. 10, 1986; 52 FR 45608, Dec. 1, 1987; 53 FR 26424, July 13, 1988; 56 FR 65420, Dec. 17, 1991; 59 FR 13434, Mar. 22, 1994; 61 FR 42991, Aug. 20, 1996; 62 FR 37488, July 14, 1997; 63 FR 41711, Aug. 5, 1998; 66 FR 39273, July 30, 2001]

§981.450 Exempt dispositions.

As provided in §981.50 any handler disposing of almonds for crushing into oil, or for poultry or animal feed, may have the kernel weight of these almonds excluded from his receipts, and exempt from program obligations so long as the handler qualifies as, or delivers such almonds to, a crusher, a feeder, or dealer in nut waste; the crusher, feeder, or dealer are acceptable to the Board; each delivery is made directly to the crusher, feeder, or dealer, by June 30 of the crop year; and each delivery is certified to the Board by the handler on ABC Form 8.

[42 FR 19322, Apr. 13, 1977]

§981.455 Interhandler transfers.

(a) *Transfers of almonds.* Interhandler transfers of almonds pursuant to

§981.55 shall be reported to the Board on ABC Form 7. The report shall contain the following information: (1) Date of transfer; (2) the names, and plant locations of both the transferring and receiving handlers; (3) the variety of almonds transferred; (4) whether the almonds are shelled or unshelled; and (5) the name of the handler assuming reserve and assessment obligations on the almonds transferred. ABC Form 7 shall be signed by the transferring handler and by the receiving handler if the latter is assuming the obligation(s).

(b) *Transfers of reserve credits.* A handler may transfer reserve credits to another handler after having filed with the Board, in accordance with §981.474, a completed ABC Form 13/14 covering the almonds to be diverted to a non-competitive outlet and all the documentation applicable thereto. Such a transfer does not relieve the transferring handler of any reserve obligations for the applicable crop year. The transferred credit shall not exceed the quantity needed by the receiving handler to cover that handler's reserve obligation. The Board shall complete the transfer upon receipt of an ABC Form 11 executed by both handlers. No transfer of reserve credits shall be made to satisfy a handler's inedible disposition obligation incurred pursuant to §981.42(a).

(c) *Transfers of reserve withholding obligation.* A handler may transfer reserve withholding obligation to other handlers pursuant to §981.55 after having filed with the Board an ABC Form 11 executed by both handlers. The Board shall approve the transfer upon receipt of the properly completed form.

(d) Transfer of inedible obligation may be made, with the approval of the Board, only when the inedible kernels are physically transferred with the entire lot of almonds. The transfer of the lot shall be reported on ABC Form 9, showing date of transfer and, for the transferring handler, the (1) original inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. For the receiving handler, ABC Form 9 shall show the (1) new inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. ABC Form 9 shall be signed

by both, the transferring handler and the receiving handler, and submitted by the receiving handler to the Board for approval.

[42 FR 19322, Apr. 13, 1977, as amended at 44 FR 30076, May 24, 1979; 56 FR 19794, Apr. 30, 1991; 62 FR 56051, Oct. 29, 1997]

§981.466 Almond butter.

Almond butter as used in §981.66(c) is hereby defined as a comminuted food product prepared by grinding shelled or blanched almonds into a homogeneous plastic or semiplastic mass or liquid having very few particles larger than $\frac{1}{16}$ inch in any dimension. To produce chunky style almond butter, almond chunks or pieces may be added up to a maximum of 25 percent by weight of the finished product. The size of the almond pieces used to make chunky style almond butter may not exceed $\frac{3}{16}$ inch in any dimension.

[48 FR 11250, Mar. 17, 1983]

§981.467 Disposition in reserve outlets by handlers.

(a) *Agents of Board.* Beginning with August 1 of any crop year, a handler may become an agent of the Board pursuant to §981.67 for the purpose of disposing of reserve almonds of such crop year, in the authorized outlets. The agency shall be established upon a handler executing a reserve agreement (ABC Form 12) ABC, applicable to diversion, containing terms and conditions specified by the Board.

(b) *Reserve credit.* Credit in satisfaction of a reserve obligation shall not exceed the accrued reserve obligation derived by applying the reserve percentage to the quantity of almonds received by a handler for his own account during the crop year. Disposition by an agent of the Board in eligible reserve outlets within a crop year in excess of his reserve obligation shall be held to be a disposition of salable almonds. Whenever such disposition has been inspected and certified, if required, and has complied with the terms, conditions, and documentation applicable to disposition of reserve almonds as determined by the Board, the disposition may be credited against any reserve obligation subsequently incurred by the handler during that crop year, or

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the disposition may be credited pursuant to § 981.455(b) against the reserve obligation of another handler.

(c) *Minimum prices.* Minimum prices shall apply to 1990-91 crop year reserve almonds diverted to almond butter, natural almond paste, foil packets for sales to airlines, and sales to government agencies, including federal and state school lunch programs. Prices are F.O.B. handlers plant. The prices may contain a maximum of two percent brokerage commission. No cash discounts are allowed. The prices are as follows for various grades or categories of almonds:

Grade or category	Price per pound
U.S. Select Sheller Run or better, unblanched.	75 cents.
U.S. Standard Sheller Run, unblanched	74 cents.
U.S. No. 1 Whole and Broken, unblanched ..	73 cents.
U.S. No. 1 Pieces, unblanched	73 cents.
U.S. No. 1 Pieces or better, unblanched, to be used for almond butter manufactured in the 48 contiguous states and shipped to EEC countries.	60 cents.
Blanched made from U.S. No. 1 Pieces or better.	95 cents.
Blanched made from U.S. No. 1 Pieces or better to be used for almond butter manufactured in the 48 contiguous states and shipped to EEC countries.	82 cents.

(d) For the 1990-91 crop year only, the reserve disposition obligation date is extended until September 1, 1992, and the date for submitting documentation verifying reserve dispositions is extended to December 1, 1992.

[42 FR 19322, Apr. 13, 1977, as amended at 56 FR 10508, Mar. 13, 1991; 56 FR 51150, Oct. 10, 1991; 57 FR 27353, June 19, 1992; 61 FR 32922, June 26, 1996]

§ 981.472 Report of almonds received.

(a) Each handler shall report to the Board, on or before the 5th calendar day of each month, on ABC Form 1, the total adjusted kernel weight of almonds, by variety, received by it for its own account for the preceding month.

(b) [Reserved]

[58 FR 34696, June 29, 1993, as amended at 61 FR 32922, June 26, 1996; 62 FR 37488, July 14, 1997; 64 FR 18802, Apr. 16, 1999]

§ 981.473 Redetermination reports.

Each handler shall furnish for use by the Board in redetermination of the kernel weight of almonds received for

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his own account and for marketing policy considerations, the information listed and described in this section. Such information shall be reported within the applicable times specified in § 981.73 on forms provided by the Board.

(a) *Handler carryover.* Report the weight of all almonds, whether unshelled or shelled, wherever located, held by the handler for the handler's own account, whether or not sold.

(b) *Delivered sales.* Report the weight of salable almonds sold and delivered (shipments), showing the weight, and whether unshelled or shelled, including those disposed of pursuant to the requirements for reserve disposition, or used in almond products.

(c) *Transfers.* A report of almonds transferred to another handler showing the weight of each lot transferred, whether unshelled or shelled.

(d) *Remaining inedible obligation.* Report the quantity of almonds the handler intends to deliver to Board approved outlets to meet the disposition obligation pursuant to § 981.42(a).

[42 FR 19322, Apr. 13, 1977, as amended at 42 FR 56488, Oct. 26, 1977; 58 FR 34696, June 29, 1993]

§ 981.474 Other reports.

(a) *Report of shipments and commitments.* Each handler shall report on ABC Form 25-1 all shipments of almonds, inshell, shelled, and products by classification (domestic and export by countries of destination); and on ABC Form 25-2 all commitments (almonds not shipped, but sold or otherwise obligated) whether domestic contract, export contract, or non-contract. If the destination of any export is unknown to the handler, such handler shall have the broker/exporter furnish this information to the Board. In support of this report, the handler shall keep invoices on the shipments, or such other documentation as may be acceptable to the Board. The reports shall be received by the Board within five calendar days after the close of each month of the crop year.

(b) *Reserve reports.* In any crop year when reserve almonds are diverted to noncompetitive outlets, such handler shall report such handler's intentions to divert on ABC Form 13 and the completion of diversion on ABC Form 14.

Upon notice to all handlers, the Board may waive the requirements to file ABC Form 13 for diversion of almonds to noncompetitive outlets which are acceptable to the Board.

(c) *Handler information reports.* Each handler shall file no later than September 1 of each year ABC Form 42, a Handler Information Sheet, listing the handler's name, address, phone number, ownership or corporate information and acknowledging receipt of marketing order program information.

[50 FR 47709, Nov. 20, 1985, as amended at 51 FR 9763, Mar. 21, 1986; 54 FR 5409, Feb. 3, 1989; 58 FR 34696, June 29, 1993]

§981.481 Interest and late payment charges.

(a) Pursuant to §981.481, the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date shown on the handler's statement. The interest charge shall be a rate of one and one half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

[61 FR 64603, Dec. 6, 1996]

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Order Regulating Handling

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